REROC
RIVERINA EASTERN REGIONAL ORGANISATION OF COUNCILS

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Mr David Moore
Policy Officer, Energy Strategy
Division of Energy, Water, and Portfolio Strategy
NSW Department of Planning and Environment
Level 11, 323 Castlereagh Street
Sydney NSW 2001

Dear David

Comments on the NSW Public Lighting Code (May 2018)

I write on behalf of the Riverina Eastern Regional Organisation of Councils (REROC) to provide comment on the NSW Public Lighting Policy (the Code). Our Member Councils are: Bland, Coolamon, Cootamundra-Gundagai, Greater Hume, Junee, Lockhart, Snowy Valleys, Temora and Wagga Wagga.

The attached comments represent the views of our Member Councils and also those of the Southern Lights Project Participants (REROC, RAMROC, CENTROC, CBRJO and Broken Hill Shire Council).

Our Member Councils have for the last decade strongly supported the stance that the Code should be mandatory. In addition, we believe if it is to be effective as a mandatory code that there must also be penalties set as levels that ensure situations do not arise where non-compliance is the better financial choice for DNSP.

We also strongly reiterate our belief that the Code must protect the parties who are at greatest risk in the event of street lighting failure, local government and the RMS; the Road Authorities.

Consequently we strongly support the recognition in the Code of councils and the RMS as the authorities in NSW with exclusive power to decide where to light a particular road, to what level to light it and in what manner.

Once again, we welcome the opportunity to have further discussion with you about the development of the Code.

Yours sincerely,

Julie Briggs
Chief Executive Officer

RESPONSE TO THE DRAFT NSW PUBLIC LIGHTING CODE (May 2018)

Introduction

We reiterate our belief that the primary purpose of the Code must be to protect the parties with the greatest risk in the event of street lighting failure, that is, the NSW Road Authorities. Therefore, technology choice and decisions about where and what to light, should primarily rest with the Road Authorities. We strongly believe that this should be reflected in Foreword to the Code.

In addition, the Code is the only form of protection that Customers have should a DNSP fail to deliver on the service obligations it makes to the Australian Energy Regulator (AER) as part of the Pricing Determination regime.

The DNSPs are the monopoly provider of the street lighting services in NSW, we understand that there is no intention of DNSPs entering into individual Service Level Agreements (SLA) with their Customers, the Code, therefore, is the default SLA. Consequently, we strongly agree that the Code should be mandatory, and that compliance should form part of the conditions of the DNSP's licence. We also agree that there should be penalties in place where a DNSP fails to meet the service standards set by the Code. There seems little point establishing a mandatory code if breaches do not have consequences.

Comments on the Key Issues contained in the Discussion Paper

1. The Role of Customers in the Selection of Technologies for Standard Luminaire List

Questions: *Which of the below options for customer involvement in selecting luminaires for the Standard Luminaire List do you support and why? Alternatively, would you prefer a different approach to selecting luminaires and why?*

a. *Service Provider must consult with Customer's (or Customer representatives) on changes to the Standard Luminaire List.*
b. *Service Provider and Customer (or Customer representative) must agree on the technical specifications used for changes to the Standard Luminaire List.*
c. *Service Provider and Customer (or Customer representative) must agree on changes to the Standard Luminaire List*

We agree that consultation is insufficient for determining the selection of technologies. The DNSP and the Customer must reach agreement on the selection of both the Standard Luminaire List and any changes to that List. Therefore, **1b and 1c are the preferred options.**

We agree with the comments made by SSROC in its submission that Customers as the Road Authorities should have the ultimate say over lighting technology choices and be empowered to make their decision based on:

- the total cost of ownership, not solely capital and maintenance costs to the Distributor;
- the implications of choosing lights with different lighting parameters such as with respect to colour temperature, colour rendition, optical distribution, light pollution (including obtrusive light, glare and upward waste light) and advanced power supplies;
- the full range of additional direct and indirect benefits that smart controls can bring; and
- the direct and wider societal benefits of smart city devices that street lights and smart controls communications networks may be able to support (including devices related to autonomous vehicles).

We do not agree with points raised by DNSPs at our most recent discussions on the Draft Code that suggested choice is an issue related to procurement. Procurement should reflect customer choice, it should not dictate it. In addition, we would argue that it is more appropriate for the parties to agree on the technical specifications in relation to the lighting rather than to focus on the product that is procured.

We note that Essential Energy suggested that a process by which agreement could be reached should be adopted. We would support working with Essential Energy on establishing the suggested process, however we note that this may not be the most efficient way of achieving an outcome across the State. In addition, we recognise that IPART, in monitoring adherence to the Code, is likely to prefer documentation in writing that demonstrates agreement by each Customer.

Consequently, we support SSROC's suggested re-writing of Clauses 1 and 11 of the Code to state the following:

1 Scope of NSW Public Lighting Code
(iii) a requirement that Service Providers ***reach agreement*** *with Customers in deciding which core lighting types they are going to offer;*

And

11 Standard Luminaires
A Service Provider must develop and maintain, ***in agreement*** *with its Customers, a list of Standard Luminaires which, unless otherwise requested by a customer in accordance with this clause, will be the default for all new and replacement installations of Luminaires in Public Lighting Assets.*

(a) For purposes of compliance, evidence of agreement to technical specifications shall be in writing from each Customer or alternatively, written evidence by the Service Provider that the Customer has been given at least 30 days to respond to a proposed technical specification for luminaires and has not responded
(b) For purposes of compliance, evidence of agreement to a change to the Standard Luminaire list (an addition or deletion) shall be in writing from each Customer and include acceptance of the initial pricing for any new Standard Luminaires or alternatively, evidence by the Service Provider that the Customer has been given at least 30 days to respond to a proposed change to the Standard Luminaire list and has not responded
(c) A Customer may request in writing that their Service Provider add specific technologies to ***or remove specific technologies from*** *the Service Provider's Standard Luminaire list.*
(d) A Service Provider must give reasonable consideration to a request by a customer received in accordance with clause 11(c)
(e) Standard Luminaires must conform to the relevant Australian standards (currently AS/NZS 60598.2.3:2015 Luminaires Part 2.3: Particular requirements - Luminaires for road and street lighting)

We are concerned about the term "give reasonable consideration" in Clause 11(d) and believe that this requires a definition which would include a requirement to consult with the Customer that made the request. The term "reasonable" is in the eye of the beholder, and clarification as to what is required would be helpful, particularly as IPART may seek this clarification as part of its monitoring of the Code.

We do not believe that the adoption of the above approach would preclude Essential Energy Customers from developing the suggested process for reaching agreement. We believe that such a process would give voice to the Code's requirements and make it easier for Essential Energy to deliver on its obligation to reach agreement. We have previously indicated that the Southern Lights Group would be happy to work with Essential Energy on the development of Guidelines for reaching agreement.

2. Setting Amended Minimum Standards for the Repair of Lights Faults

Questions:

a. *How should service standards be defined – in terms of average times for repair or maximum times for repair?*
b. *What are the costs and benefits of changing from the current Code's average day target for repairs to a target based on the maximum number of days to repair?*
c. *What are reasonable times for repair of the light faults, including for the repair of lights faults associated with higher road safety risks?*
d. *Can the framework for minimum service standards be structured in a way that prioritises the repair of faults associated with higher road safety risks?*

a) *How should service standards be defined – in terms of average times for repair or maximum times for repair?*

We agree that service standards should be defined in terms of maximum times for repair. This approach would allow Customers to form their expectations in relation to repairs that are in keeping with Code's requirements. Average times can be manipulated; a DNSP could undertake a large number of repair works in highly density population areas which would then offset slow repair times in more remote or difficult locations. However, we agree that average repair times should continue to be collected and reported as an overall guide to the DNSP's efficiency in service delivery.

We agree that the Code should set as a **maximum number of days** that individual repairs must be undertaken, this should be reported to the IPART as part of the reporting regime for the Code.

We note that that most jurisdictions in Australia are using maximum number of days for repair times. We believe that the certainty that this provides Customers in relation to service delivery means that it is the best course of action for the Code.

b) *What are the costs and benefits of changing from the current Code's average day target for repairs to a target based on the maximum number of days to repair?*

We do not believe that changing from an average days' target to a maximum number of days will significantly impact on the operating costs of the DNSPs. At consultations held in relation to the Code, the DNSPs have indicated that their current average days for repair are well under the maximum number of days we have suggested for the Code.

Therefore, arguments that it will drive up costs of delivery are not substantiated by current DNSP average repair time rates, unless they are currently manipulating average times, by using high density easily repaired assets to offset the time it is taking to repair assets in more difficult or remote locations.

Customers need to know how long it will take to repair a street light. Setting a maximum number of Business Days for repair provides a transparent benchmark that everyone understands. In addition, this is the type of benchmark that will clearly indicate to IPART how effectively the DNSP is meeting its obligations under the Code.

c) What are reasonable times for repair of the light faults, including for the repair of lights faults associated with higher road safety risks?

Reasonable Times for Repair of Light Faults

In considering what the most appropriate maximum times should be for repairs, we have consulted with our member councils, have taken into account Essential Energy's current practice and its stated average repair time of 4 days. We have also been aware of the DNSP's advice that they would increase costs to Customers if repair times were too onerous. Therefore, we support the following Minimum Services Standards, which are the same as those nominated by SSROC:

SERVICE	MINIMUM SERVICE STANDARD
1. Repair of faults related to repairs to underground faults or requiring a site-specific Road Occupancy Licence	Maximum of 20 Business Days from the date that notice is received of a Fault. An **exception** to the underground repair maximum applies in circumstances where a Road Occupancy Licence is required. In such a circumstance, the maximum will apply from the date that the Licence is granted provided that the Road Occupancy Licence is applied for within 7 days of the Fault report.
2. Repair of all other Faults	Maximum of 10 Business Days from the date the notice is received of a Fault.
Breach of Minimum Service Standard	Failure to complete repairs within the Minimum Standard results in the following penalties: a) *Underground Repairs* – Service Provider to pay the Customer $25 for the first 20 Business Days and then a further $25 for each subsequent 20 Business Days from the date the notice is received of a Fault. b) *All Other Faults* – Service Provider to pay the Customer $25 for the first 20 Business Days and then a further $25 for each subsequent 10 Business Days from the date the notice is received of a Fault.

We believe the above is in keeping with established timeframes and penalties in other Australian jurisdictions. We have included an incremental penalty as an incentive to get the repairs completed. We are concerned that where a DNSP has breached the Standard that if there is only one penalty point there will be no incentive to complete the repairs because the penalty has been paid, an incremental approach is intended to incentivise action.

As stated above we believe that the DNSPs should continue to collect data on average repair times as this will provide an overall indication of efficiency.

Reasonable Times for Repair of Light Faults associated with High Road Safety Risks
While every street light is important we recognise that there are situations where the loss of a light or lights generates high road safety risks which need to be addressed quickly.

We agree with SSROC's recommendations that multi-lights' faults involving either pedestrian crossings or Category V lighting should have a maximum of repair time of 3 Business Days except where they are underground supply faults. We agree that underground supply faults in these circumstances should be repaired in 7 Business Days except in circumstances where a Road Occupancy Licence is required.

d) Can the framework for minimum service standards be structured in a way that prioritises the repair of faults associated with higher road safety risks?

We believe the framework can be structured to prioritise repair of faults associated with higher road safety risks, as stated above.

3. Determining the Compensation for the Service Provider's Failure to Meeting Minimum Service Standards for the Repair of Light Faults

Questions:

a. *What is an appropriate level of compensation for the failure to comply with the minimum services standards for fault repair?*
b. *Should the system for compensation involve a one-off credit, a recurrent system of compensation, or a sliding scale linked to the time for repairs?*

a) What is an appropriate level of compensation for the failure to comply with the minimum services standards for fault repair?

As stated above we believe that $25 for the first missed repair time and then subsequent payments for each nominated time period after the initial standard has been missed is appropriate. The suggested base-level compensation is in keeping with what other jurisdictions in Australia are levying.

b) Should the system for compensation involve a one-off credit, a recurrent system of compensation, or a sliding scale linked to the time for repairs?

As stated above we believe it is important to incentivise repair through levying the compensation at each point in the timeline where the repair has not met the minimum service standard. If the penalty is only ever levied once, then there is no incentive to repair once the DNSP becomes liable for the penalty payment.

Other Issues raised in the Discussion Paper

- **Dispute Resolution – Section 14**

It is our understanding that the role of monitoring performance against the Code will fall to IPART. Therefore, we believe it would provide consistency of approach if IPART was given responsibility for resolving disputes. If IPART has carriage of the dispute resolution function, then it is well placed to make assessments about the DNSP's compliance with the Code because it will have been involved in its interpretation through the dispute resolution process.

In addition, IPART will be able to utilise its experience in dispute resolution to assist it to structure the DNSP's reporting regime against the requirements of the Code.

- **Minor Capital Works – Section 9**

This clause as it currently stands appears to exclude additional lighting if it is not on existing electricity distribution poles. It appears to restrict the works to only installing Standard Luminaires on existing structures.

Decisions on in-fill lighting are often made in response to issues around crime and safety. The importance of lighting in addressing crime and making the community feel safe is well documented. There is not always existing infrastructure ready to take the new lighting; consistent with our argument that Customers should decide on what lighting is needed and where, Customers should be able to decide to have additional lighting even where there is no existing infrastructure to support it. This type of in-fill lighting should be included as Minor Capital Works.

We agree with SSROC's submission that this clause should include reference to additional columns and underground supply. We also agree with SSROC's revised definition for Non-contestable Minor Capital Works:

> ***Non-contestable Minor Capital Works*** *– means the installation of infill lighting of up to ten Luminaires on existing distribution poles or the installation of up to ten dedicated lighting columns, luminaires and associated supply per particular work project which does not fall within a Class of Contestable Services.*

- **Review of the Code – Section 15**

The consultation for the current review has been particularly long and has passed through several State agencies. We believe that it is very important that fixed time scales be included for the review of the Code and each subsequent review. We do not believe that the term "as soon as possible" is appropriate for inclusion in the new Code.

We support SSROC's proposal that the first review should be undertaken within 60 days of the end of the period that is one year from the Effective Date. We agree that following the first review each subsequent review should be *undertaken 18 months prior to the commencement of the respective regulatory pricing period as set by the Australian Energy Regulator for NSW electricity distributors.*

The Code's shift to a mandatory environment makes it important that all parties and stakeholders have a clear understanding of when reviews will be undertaken.

- **Minimum Service Standards for Repairs in Remote Locations – Section 10**

We do not support a separate standard for remote locations. We believe that the timeframes proposed above are adequate for all locations.

Other Issues raised in the Discussion Paper

- **Reporting Requirements – Clause 8**

We remain concerned that any failure to meet the Clause 8 Reporting requirements will not be met with penalties. We recognise that IPART will monitor adherence to the Code as part of its role in monitoring compliance with licence conditions. However, given IPART's admission in a recent teleconference that when monitoring licence conditions, it takes a risk-based approach that is largely around risk to public welfare and safety we believe that it is imperative that IPART put a regime in place that appropriately monitors compliance with the Code.

IPART has indicated that it wants to have robust systems in place that will allow the efficient and effective enforcement of the Code. We agree that the systems must be robust and consequently we believe that Customers should be consulted on the development of those systems and have an active role in testing them.

Again, we reiterate the Code is the only compliance regime that monitors the delivery of this monopoly service provision. Therefore, it is imperative that IPART have a system in place that recognises that the Road Authorities have ultimate responsibility for providing effective lighting and that the DNSPs are the service providers.

We agree with SSROC's proposal that the DNSP's Annual Reports should include a summary of the emerging technologies that the DNSP is investigating, trialling and/or implementing.

- **Non-Standard Luminaires – Clause 12**

Customers should be able to choose non-standard luminaires if this is the product that best meets their needs. Therefore we agree with SSROC's suggested amendment to Clause 12(c) that the DNSP should not be able to unreasonably refuse to use the selected luminaire providing that it meets reasonable current requirements.

- **Definitions – Clause 17**

We agree with SSROC's request for the inclusion of a definition for the word "accurate". The DNSPs are required to provide an accurate inventory and therefore it is important from a compliance perspective that all parties have the same understanding of the terminology.